IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1005 of 1980
with
FIRST APPEAL NO. 1006 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COTTON CORPORATION OF INDIA LTD

Versus

BHARAT GINNING FACTORY

Appearance:
MR BHARAT J SHELAT for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/03/2000

ORAL JUDGEMENT

The appellant (original defendant) in both these appeals has challenged the judgment and decree passed in Special Civil Suit No. 139/74 and 81/1975 decided by the learned Civil Judge (SD) Junagadh on 30.4.1980 decreeing the suit of the respondent (original plaintiff) directing

the appellant to pay Rs. 15,487-81ps and Rs. 17,929-74ps respectively with running interest at the rate of 6% per annum from the date of the suit till realisation.

Since the facts in both the appeals are similar, both the appeals are heard together and disposed of by this common judgment and order.

It is the case of the plaintiffs in their respective suit that he was appointed by the defendant as a nominee to purchase kapas (cotton) and the parties have entered into agreement. That the plaintiff was to purchase kapas for and on behalf of defendant according to the terms and conditions of the contract agreement. That the rates of expenses, commission charges were also fixed under the agreement. The plaintiff started working as a nominee of the defendant as per the oral agreement prior to the date of agreement. It is the case of the plaintiffs that they have submitted accounts to the defendant alongwith vouchers and bills to defendant's office. That they have performed all their duties as nominee of the defendant in purchase of Kapas and doing ginning and pressing work and Godowning work of the said cotton purchased for defendant and on completion of the said work, the plaintiffs claimed their dues from the defendant. Inspite of repeated demand, the defendant did not pay the plaintiff's dues. The plaintiff served the defendant with a notice so far as Special Civil Suit No. 139/74 is concerned on 1.12.1974 and demanded the dues. Even after the service of notice, the defendant did not pay the dues but has sent a letter to the plaintiff on 7.12.74 alongwith a crossed cheque of Rs. 6,098-81ps. dated 22.10.1974. That in the said letter, the defendant has falsely stated that the plaintiff's partner had settled the accounts for that amount, and, therefore, the plaintiff returned the cheque to the defendant. That after returning the cheque, the defendant replied to plaintiff's notice through its advocate on 18.12.1974 and gave evasive reply and denied the claim of the plaintiff, therefore, the plaintiff of Special Civil Suit No. 139/74, has claimed Rs. 15,410-81ps towards principal amount. The plaintiff has also claimed Rs. 8,579-12ps towards the interest at the rate of 18% per annum upto the period ending on 25.11.74. The plaintiff has also claimed Rs.238-50ps towards the interest from 25.11.74 till the date of the suit. The plaintiff has also claimed Rs. 210/- towards the notice charges. In all, the plaintiff has claimed Rs. 24,438-43ps alongwith interest and costs of the suit and prayed for decree accordingly.

The plaintiff of Special Civil Suit No. 81/1975 with the similar facts as stated above, submitted his final statement of accounts on 4.1.73. According to the said statement, the plaintiff claimed Rs. 28,132-36ps towards ginning and pressing charges. The plaintiff also claimed Rs. 8711-55ps towards expenses from ginning and pressing. The plaintiff also claimed Rs. 2402-37ps towards commission charges.The plaintiff claimed Rs. 689-32 ps towards godown rent. The plaintiff claimed Rs. 657-02ps towards marketing charges. The plaintiff claimed Rs. 305-95ps towards miscellaneous expenses of telegram post, parcel etc. In all, the plaintiff claimed Rs. 40,898-57ps from the defendant. It is the case of the plaintiff that the defendant paid Rs. 20,714-63ps to the plaintiff on 17.7.74 by cheque and plaintiff has already issued receipt of the payment of said amount. It is contended that the defendant disallowed his claim of Rs. 20,183-94ps and in order to recover the said amount, the plaintiff served the defendant with a notice by registered post on 18.2.75. The defendant replied to the said notice on 3.3.75 and gave evasive reply and raised false contentions. It is alleged by the plaintiff that the defendant wants to deduct the said amount illegally from his claim and therefore, the plaintiff has filed the present suit to recover the amount of Rs. 20,183-84ps from the defendant alongwith interest at the rate of 14% per annum and costs of the suit. The plaintiff has prayed for decree accordingly.

The defendant by his written statement at Ex. 29 and Ex. 11 respectively in both the suits disputed the claim of both the plaintiffs. In substance, the defendant pointed out that the plaintiff of Special Civil Suit No. 139/74 was offered to accept Rs. 6098-81ps towards the dues but the plaintiff has not accepted. As per the say of the defendant the account was settled between the defendant and one Mr. VP Patel, the partner of plaintiff's firm and said Mr VP Patel had agreed to accept Rs. 6,098-81ps towards full and final settlement of the claim, and therefore, the plaintiff is not entitled to recover more than the said amount from the defendant and therefore, claim of Rs. 24,438-43ps raised by the plaintiff is not sustainable. As far as Special Civil Suit No. 81/75 is concerned, while disputing the claim putforward by the plaintiff, the defendant pointed out that the matter was discussed with the plaintiff and the account was settled with Mr. BM Patel of the plaintiffs society and said Mr.BM Patel agreed that an amount of Rs. 20,714-63ps was the correct amount due and

payable to the plaintiff and, therefore, the said amount has been paid to the plaintiff in full and final settlement of plaintiff's claim and, therefore, claim of balance amount putforward by the plaintiff is not sustainable.

On the basis of the pleadings, necessary issues were framed and after appreciating the documentary as well as oral evidence, the learned trial judge passed the decree in favour of the plaintiff of Special Civil Suit No. 139/74 for Rs. 15,487-81ps with running interest at the rate of 6% per annum from the date of the suit till realisation. In both the suits, the decree is passed with costs.

Both the plaintiffs in their respective suits have claimed the principal amount for performing their duties as nominees for the expenses incurred by them and the said claim includes ginning and pressing charge, labour charge and other expenses incurred by them. It is not in dispute that the plaintiffs were appointed nominees by the defendant as per the agreement dated 16.5.1972 and 1.5.72. One of the objection raised by the defendant in disallowing the claim of the plaintiff of Special Civil Suit No. 139/74 was to the effect that one Mr VP Patel partner of plaintiff's firm has agreed to accept Rs.6098-81ps towards the full and final settlement of the claim and, therefore, plaintiff is not entitled to recover more than the said amount from the defendant. This claim of defendant is falsified by letter ex. 78 which clearly indicates that said Mr VP Patel never agreed to this amount. The offer was not accepted by the plaintiff as per letter ex. 87 and 88 also. Mr. Patel only undertook to convey the offer to Managing partner of plaintiff's firm but that offer was not accepted by Maganbhai. On the other hand,the defendant failed to produce any evidence that Mr VP Patel agreed to accept Rs. 6098-81ps from the defendant towards full and final settlement of the claim. Mr Ashar examined by the defendant at Ex. 109, in his evidence, he has clearly stated that he has got no personal knowledge of the talk between the parties. The correspondence between the parties clearly indicates that plaintiff never agreed to accept this amount. In view of the fact that the plaintiff has not accepted the cheque for Rs. 6098-81ps sent by the defendant would clearly go to establish that the plaintiff has not accepted the alleged settlement.

The defendant in Special Civil SUit NO.81/75 has also come forward with the say that the bill was settled between the plaintiff's representative Mr BM Patel and he

accepted the amount of Rs. 20,740-63ps towards the full and final settlement of claim.Mr BM Patel at Ex. 53 has clearly denied that he accepted the amount of Rs.20,740-63ps towards full and final settlement of the claim. The defendant failed to examine anybody from its side to prove that Mr. Patel was agreed to accept the said amount towards the full and final settlement of the claim of plaintiff. Mr Ashar at Ex. 86 stated that he has no personal knowledge. There is nothing in the evidence to show that Mr Patel agreed to that amaount for full and final settlement of the claim. Mr Patel being employee of the society, he had no authority to let go the claim of the plaintiff's society.

In this view of the matter, I am clearly of the view that the defendant failed to establish their claim in both the suits that the plaintiffs have settled their dues with the defendant and, therefore, plaintiffs are not entitled to claim any more amount then the amount settled between the parties.

The next question that may arise is as to whether the plaintiffs in both the suits are entitled to claim the amount as prayed for under the different heads, namely; ginning and pressing charges, labour charges including transport, carting and godown charges and other miscellaneous expenses incurred by them. Both the plaintiffs have produced necessary bills and statements of account justifying their claims. There is no dispute to the fact that the defendant has not received the same.

The defendant disallowed the ginning and pressing charges of the plaintiffs on the ground that they are not liable to pay more than the charge fixed by the Director of Agriculture, Government of Gujarat or Cotton Superintendent, Junagadh district. In support of this, a reliance is placed on the letter ex.110 dated 7.9.72 written by the Director of Agirculture alongwith the annexures. As per the said annexures, the Cotton Superintendent of Junagadh fixed the ginning and pressing charge for Rajkot district. It is, therefore, an admitted position that the charge or rate for ginning and pressing were not fixed for Junagadh district. When no rates were fixed for ginning and pressing for Junagadh district, the plaintiff has to pay according to the market rate prevailing at the relevant time and the plaintiff has paid accordingly. In this view of the matter, the plaintiffs are entitled to recover the amount actually paid by them towards the ginning and pressing charge at the market rate. In this view of the matter, it is not open for the defendant to deduct any amount

towards ginning and pressing charges. In fact, this point is concluded by the decision of Division Bench of this Court in First Appeal No. 1004/1980 decided on July 5, 1995, in the matter of very appellant and the Gujarat State Co-operation Marketing Federation Ltd., wherein it is held that:

> This first contention of the agreement which is the heart of the agreement makes it abudantly clear that it is for the nominee to determine the grade of kapas and the quality difference in kapas and according to it,he is bound to pay the price to the growers immediately. There is no reference whatsoever to the grade and the quality of kapas to be determined by any of the members of the East India Cotton Association. That Association comes into picture only when the samples are taken from the ginned and fully pressed bales. At that stage, the criteria for determination of the quality would be entirely different. The question of outcome and increased rate would be wholly absent. The survey report and finding of East India Cotton Corporation would hardly have any relevance when the parties have, by their agreement, left this question of grade of kapas and the quality difference tobe determined by the nominee. Moreover, the quality of kapas is material and substantially different from the quality of cotton. There is no evidence as to what is the standard quality for which the support price or basic price of kapas was fixed. In view of this, the learned trial judge is fully justified in holding that the plaintiff had the authority to determine the grade and quality by effecting purchase of raw cotton as the nominee and the plaintiff is entitled to recover the price at the rate of Rs. 46/ per 20 kgs. for the kapas purchased as the nominee of the defendant and the decree in respect of the amount in this connection is required to be confirmed.

In the said appeal, it was contended that when the ginning and pressing rates are statutorily regulated and fixed, only those rates can be paid and claimed and, if any rate in breach of such statutory fixation is paid or claimed, that would not only by illegal and prohibited, but would also amount to an offence under the Act, namely, Cotton Gining and Pressing Factories Act, 1925. One more contention was advanced by the appellant relying upon the letter dated 20.5.72 from the Director

of Agriculture addressed to Cotton Superintendent intimating the ginning and pressing rates for the year 1971-72 and thereby it was submitted that they are ready and willing to pay at this rate and they had also written to the plaintiff to come and collect the payment. Answering the aforesaid contention, the Division Bench has observed as under:

> The requirements of section 5-B are that the Superintending Agricultural Officer should be of the opinion that it was necessary so to do for the purpose of securing the ginning or pressing of cotton in any local area at reasonable rates of charges. If he has formed that requisite opinion, then he may by an order published in the Official Gazette direct that no owner or person in charge of any cotton ginning factory or cotton pressing factory in such local area shall in excess of such maxima as may be fixed by the rate fixing committee of such local area under sub-section(6). Sub-section (6) provides that every rate fixing committee shall fix the maximum rate for gining and pressing factory having regard to such matters asmaybe prescribed. "Prescribed" means prescribed by or under the rules made under this Act as defined in section 2(h). It is stated that there are no rules and, therefore, nothing is prescribed under the Act. Therefore, the rates to be taken into account by the rate fixing committee have not been fixed and prescribed at all. No notification has been shown about the constitution of any committee; no notification or notified order is shown or produced fixing the control rate of ginning and pressing. In absence of any such notified and published order or statutory instruction, there cannot be any such statutory rate fixation and the so-called fixation by the Cotton Superintendents for different area cannot have legal efficacy. Even the Director of Agriculture has accepted the fact of not only of non-publication of a notification, but also absence of legal efficacy of such fixation. Therefore, the contention of the defendant that such rates fixed by the Cotton Superintendents are binding to the growers has no leg to stand and the contention must fail.

In view of the aforesaid observation of the Division Bench would clearly answer the contention of the

appellant that the rate fixed by the Cotton Superintendent are binding to the growers as well as nominee is without any substance, even if it is assumed that the letter dated 7.9.72 exh. 110 written by the Director of Agriculture fixing the ginning and pressing charge even for Junagadh district also.

In view of the above discussion, once the plaintiffs have successfully established their claims on different heads by submitting necessary bills and statements, it is not necessary for me to go deep and to minutely examine such claim. In view of this, I am of the opinion that the learned trial judge was justified in passing the decree in favour of the plaintiffs. No case has been made out by the appellants warranting any intereference. There being no substance in any of the First Appeal, both the First Appeals are dismissed with costs.

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